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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
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12 BRIAN TINGLEY,
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14 Plaintiff,
15 v.
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17 ROBERT W. FERGUSON, in his official
18 capacity as Attorney General for the State
19 of Washington, UMAIR A. SHAH, in his
20 official capacity as Secretary of Health for
21 the State of Washington, and KRISTIN
22 PERERSON, in her official capacity as
23 Assistant Secretary of the Health Systems
24 Quality Assurance Division of the
 Department of Health,

1 Defendants.

2 CASE NO. 21-5359 RJB
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4 ORDER ON MOTION OF EQUAL
5 RIGHTS WASHINGTON FOR
6 PERMISSION TO INTERVENE AS
7 PARTY DEFENDANT PURSUANT
8 TO RULE 24(B)
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10 THIS MATTER comes before the Court on Equal Rights Washington's Motion for
11 Permission to Intervene as Party Defendant Pursuant to Rule 24(b). Dkt. 16. The Court has
12 considered the pleadings filed regarding the motion and the remaining file.

13 On May 13, 2021, Plaintiff Brian Tingley, a licensed Marriage and Family Therapist,
14 filed this case challenging a 2018 amendment to Washington's Uniform Disciplinary Act, RCW
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1 § 18.130.010, *et. seq.* (“Amendment”), which prohibits licensed mental health providers from
 2 performing sexual orientation or gender identity conversion therapy on minor patients, RCW §
 3 18.130.180(27). Dkt. 1. After the disputed Amendment, the Uniform Disciplinary Act includes
 4 the following relevant definitions:

- 5 (a) “Conversion therapy” means a regime that seeks to change an individual's sexual
 orientation or gender identity. The term includes efforts to change behaviors or gender
 expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward
 individuals of the same sex. The term includes, but is not limited to, practices commonly
 referred to as “reparative therapy.”
- 8 (b) “Conversion therapy” does not include counseling or psychotherapies that provide
 acceptance, support, and understanding of clients or the facilitation of clients' coping,
 social support, and identity exploration and development that do not seek to change
 sexual orientation or gender identity.

10 RCW § 18.130.020(4). The Plaintiff brought this case for declaratory relief against the
 11 Washington State Attorney General and other state officials (collectively “State”) arguing that
 12 the Amendment violates: (1) the Plaintiff's First Amendment free speech rights, (2) his clients'
 13 First Amendment free speech rights, (3) the Plaintiff's Fourteenth Amendment right to due
 14 process because the Amendment is impermissibly vague, and (4) the Plaintiff's First Amendment
 15 right to freely exercise his religious beliefs. Dkt. 1.

16 Equal Rights Washington (“ERW”), an organization that advocates for the state's lesbian,
 17 gay, bisexual, transgender and queer (“LGBTQ”) residents, move to intervene as a party
 18 defendant in pursuant to Fed. R. Civ. P. 24(b), “Permissive Intervention.” Dkt. 16. The Plaintiff
 19 opposes the motion. Dkt. 24. The State did not respond to the motion. ERW filed a reply (Dkt.
 20 25) and the motion is ripe for review.

DISCUSSION

A. STANDARD ON PERMISSIVE INTERVENTION UNDER RULE 24(b)

1 Fed. R. Civ. P. 24(b)(1) provides, in relevant part, that “the court may permit anyone to
 2 intervene who . . . has a claim or defense that shares with the main action a common question of
 3 law or fact.” Rule 24(b)(3) goes on to provide that “[i]n exercising its discretion, the court must
 4 consider whether the intervention will unduly delay or prejudice the adjudication of the original
 5 parties’ rights.” In the Ninth Circuit, “permissive intervention requires (1) an independent
 6 ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between
 7 the movant’s claim or defense and the main action.” *Freedom from Religion Found., Inc. v.*
 8 *Geithner*, 644 F.3d 836, 843 (9th Cir. 2011).

9 **B. ERW’S INTERVENTION**

10 ERW’s motion for permission to intervene (Dkt. 16) should be granted. The Plaintiff
 11 does not contest that there is an independent ground for ERW’s intervention or that the motion
 12 was timely. ERW has sufficiently shown that it shares a common claim or defense here. ERW
 13 plans to defend the constitutionality of the Amendment and so it shares a common question with
 14 the main action. Further, its intervention will not unduly delay or prejudice the adjudication of
 15 the original parties’ rights. The case was filed only a little over a month ago. Parties do not
 16 anticipate completing briefing on the Plaintiff’s motion for preliminary injunction and motion(s)
 17 to dismiss until mid-August to late-August. While the Plaintiff complains about being forced to
 18 respond to a second motion to dismiss, that is not an uncommon event in any litigation.
 19 Additionally, other factors support ERW’s intervention: it will contribute to the development of
 20 the factual issues.

21 The Plaintiff argues that the motion should be denied because ERW did not comply with
 22 Rule 24(c) which provides that, “[t]he motion [to intervene] must state the grounds for
 23 intervention and be accompanied by a pleading that sets out the claim or defense for which
 24

1 intervention is sought.” The Plaintiff properly acknowledges that Ninth Circuit has adopted a
2 relaxed standard of this Rule, not requiring that the pleading be attached where “the court was
3 otherwise apprised of the grounds for the motion.” *Beckman Industries, Inc. v. International Ins.*
4 *Co.*, 966 F3d. 470, 474 (9th Cir. 1992). The court is so apprised here. The motion (Dkt. 16)
5 should be granted and ERW should be added as a defendant in this case.

6 **IT IS SO ORDERED.**

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
8 to any party appearing *pro se* at said party’s last known address.

9 Dated this 28th day of June, 2021.

10 
11 ROBERT J. BRYAN
12 United States District Judge